

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KEVIN APGAR,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-505-***LPS
)	
WARDEN RAPHEAL WILLIAMS)	JURY TRIAL DEMANDED
DR. BINNON, AND JAMES WELCH,)	
)	
Defendants.)	

STATE DEFENDANTS' ANSWER TO THE COMPLAINT

COME NOW, defendants Warden Rapheal Williams and James Welch (“Answering Defendants”) by and through their undersigned counsel, and hereby answer the Complaint of the plaintiff, Kevin Apgar (“Plaintiff”). (D.I. 2). Answering Defendants answer only those portions of the Complaint applicable to Answering Defendants as follows:

STATEMENT OF CLAIM

1. Denied.
2. The allegations contained in No. 2 under Statement of Claim are not directed to Answering Defendants and thus no response is required. To the extent that a response is required, the allegations are denied.
3. Denied.

Attachment to Complaint

The allegations contained in the attachment to the Complaint that starts with “(Dr. Binnon)” at the top of the page are not directed to Answering Defendants and thus no response is required. To the extent that a response is required, the allegations are denied.

Answering Defendants specifically deny any wrongful conduct. Answering Defendants specifically deny that they caused any injury claimed by Plaintiff. Answering Defendants specifically deny that they were deliberately indifferent to any serious medical condition of Plaintiff.

RELIEF

It is specifically denied that Plaintiff is entitled to any monetary damages, including punitive, compensatory, investigation or attorneys' fees. It is specifically denied that Plaintiff is entitled to declaratory, injunctive or any other relief.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff has failed to exhaust his administrative remedies.
3. Answering Defendants are immune from liability under the Eleventh Amendment.
5. Answering Defendants are entitled to qualified immunity.
6. As to any claims under state law, Answering Defendants are entitled to immunity under the State Tort Claims Act, 10 *Del. C.* § 4001 *et seq.*
7. As to any claims under state law, Answering Defendants are entitled to sovereign immunity in their official capacity.
8. Answering Defendants cannot be held liable in the absence of personal involvement for the alleged constitutional deprivations.
9. To the extent that Plaintiff seeks to hold Answering Defendants liable based on supervisory responsibilities, the doctrine of *respondeat superior* or vicarious liability is not a basis for liability in an action under 42 *U.S.C.* § 1983.

10. Answering Defendants, in their official capacity, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 U.S.C. § 1983.

11. Insufficiency of service of process.

12. Insufficiency of process.

13. Lack of jurisdiction over the person and subject matter.

WHEREFORE, the Answering Defendants respectfully requests that judgment be entered in their favor and against Plaintiff as to all claims and that attorney fees be awarded to the Answering Defendants.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, # 4667
Deputy Attorney General
Department of Justice
820 N. French Street, 6th Floor
Wilmington, De 19801
(302) 577-8400

Dated: January 9, 2008

Attorney for State Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2008, I electronically filed *State Defendants' Answer to the Complaint* with the Clerk of Court using CM/ECF and have mailed by United States Postal Service, the document to the following non-registered participant:

Kevin Apgar
SBI # 302981
Howard R. Young Correctional Institution
P.O Box 9561
Wilmington, DE 19809

/s/ Stacey Xarhoulakos
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